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EDWARD HENRY STROBEL, Bemis Professor of Law at the Harvard Law School from 1898 to 1906, died in Bangkok, Siam, on January 15, 1908, at the age of fifty-two. The career of Professor Strobel was of marked brilliancy and of exceptional interest. He graduated from Harvard College in 1877 and from the Law School in 1882. After practicing law for three years, he became secretary to the United States Legation at Madrid, which position he held for five years. In 1893 and 1894 he served as Third Assistant Secretary of State. Thereafter he became successively Minister to Ecuador and to Chili and served as arbitrator of the Ferrant claim between France and Chili. In 1898 he became Professor of International Law. In 1903 Professor Strobel entered the service of the King of Siam as legal adviser, and three years later he resigned his professorship in order to assume that office permanently. In June of 1906 the degree of LL.D. was conferred on him by his college in recognition of his ability and distinguished services abroad. His death will be deeply felt by those who were in any way brought in contact with him.

THE EFFECT OF DISCHARGE IN BANKRUPTCY ON ASSIGNMENTS OF FUTURE EARNINGS. — It rests in the nature of things that there can be no "title" to non-existent property. Nevertheless, where future property, if it come into existence at all, must come as the product of something presently owned, our law has, in certain instances, imputed to the owner a potential posses-

sion of the non-existent property, which possession is conceived to be subject to present transfer.[1] The right of the assignee of a non-existent chose in action has sometimes been confused with that of the purchaser of such future property. His right, however, rests on an entirely different basis. The earlier common law even refused to give effect to assignments of existing contractual rights. Eventually the rights of such assignor and assignee were worked out on the principle of an irrevocable agency in the latter to collect and retain to his own use the obligation owed to the assignor.[2] This doctrine has marked theoretical and practical advantages, but it is to be observed that it makes possible the effectual "assignment" of a right not yet in being, without imposing even the limitations of the fiction of potential possession. However, the courts, apparently impressed by the fact that public policy is opposed to permitting one to mortgage himself too far into the future, have declined to give effect to assignments of future wages unless to be earned in an employment existing at the time of assignment.[3] This subject has been brought into some prominence by a recent conflict of authority. When an assignment of wages to be earned under an existing employment is given as security for a loan, and the assignor thereafter receives his discharge in bankruptcy, the question arises whether or not the assignee may collect wages earned by the assignor after the discharge. It has been held[4] that the assignee had, at the time of bankruptcy, a valid lien on the future wages, which is preserved by the Bankruptcy Act.[5] The three other cases[6] dealing with the problem hold that such an assignee can have no lien until the wages have been earned, and therefore that at the time of discharge there is no valid lien to be preserved. The Supreme Court of Massachusetts has recently held that such an assignment operated to transfer potential possession of the wages to be earned after bankruptcy, and that the assignee therefore had, at the time of the discharge, a valid lien. *Citizens' Loan Ass'n* v. *Boston, etc., R. R. Co.*, 82 N. E. 696.

All of these cases seem to overlook the nature of the so-called "assignment" of choses in action. A power of attorney to collect wages which may chance to be earned in the future, cannot with propriety be spoken of as a lien, even though given as security for a present obligation. On the other hand, there appears to be no provision in the Bankruptcy Act which can operate to disturb this agency of the assignee. Indeed, it is recognized that such powers of attorney to collect choses in action which were in existence before the bankruptcy, survive the discharge.[7] It seems to follow that such a power of attorney must equally be effectual to permit the assignee to collect the bankrupt's after-acquired choses in action. The weight of the objection to this rule founds itself on "the spirit of the bankruptcy laws." Undoubtedly the dominant purpose of such enactments is to appropriate the whole of the debtor's present property to the payment of his debts and to permit him to retain his future earnings as against former creditors.[8]

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[1] Grantham *v.* Hawley, Hob. 132; Hull *v.* Hull, 48 Conn. 250.

[2] See Prof. Ames in 3 HARV. L. REV. 337 *et seq.*

[3] Herbert *v.* Bronson, 125 Mass. 475. See Kane *v.* Clough, 36 Mich. 436; Garland *v.* Harrington, 51 N. H. 409.

[4] Mallin *v.* Wenham, 209 Ill. 252, 258.

[5] Bankruptcy Act, § 67 *d*, 30 Stat. at L. 564.

[6] *In re* West, 128 Fed. 205; *In re* Home Discount Co., 147 Fed. 538, 547; Leitch *v.* Northern Pacific Ry. Co., 95 Minn. 35.

[7] Stedman *v.* Gassett, 18 Vt. 346; Hayes *v.* Pike, 17 N. H. 564. *Cf. In re* Oliver, 132 Fed. 588.

[8] See 2 Bl. Comm. 471, 472.

Since the present Act fails to provide for the extinction of such powers to collect after-acquired rights of action, that object seems not to have been entirely secured.

JUDICIAL RESTRICTIONS ON THE LEGISLATIVE POWER OF TAXATION. — It is well settled by the courts, both state and federal, that taxation must be for public purposes.[1] In some cases this conclusion is based on express or implied constitutional provisions.[2] But in a number of leading cases it is not so based.[3] It is there drawn from question-begging theories of the nature of legislation, from supposed implied reservations of private rights in the so-called social compact made at the establishment of government, and even from the common dictionary definition of taxation. These sources are clearly questionable. It seems, however, that the doctrine of these cases was established, not on account of its constitutional or logical necessity, but because it was very desirable and because the courts, being regarded as guardians of private rights even when not secured by constitutional provisions, were ready to declare unconstitutional statutes infringing such latent rights. In the assumption of such power the courts seem to have encroached on the functions of the legislature by defining without constitutional requirement the purposes for which it seems wise or politic to tax.

After establishing the public purposes of taxation, whether properly by force of a constitutional provision or improperly by encroaching on the powers of the legislature, courts further usurp legislative prerogatives by refusing to declare taxing acts public, the purposes of which do not fall within a restricted and artificial definition.[4] This usurpation affects all legislative taxing acts for purposes lying between the restricted definition and the reasonable and liberal definition which the legislature should be allowed to follow. To justify the courts in declaring a tax void, the absence of all possible public interest should be so clear that no reasonable man could consider it promotive of the public welfare.[5] If such taxation is unjust or excessive, the only security for correction is the legislative body.[6] Ultimately the responsibility will rest where it ought, — on the electors. This seems good politics and, moreover, respects our tripartite form of government.

A class of cases involving these principles are the decisions as to the constitutionality of state acts taxing insurance companies for the benefit of disabled firemen. When applying only to foreign insurance companies, such statutes have been sustained as police regulations.[7] But other cases have more correctly held that, as the revenue purpose is more important than the regulative, the imposition is a tax.[8] As a tax, it has been held invalid as offending not only against specific constitutional provisions, but against the

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[1] Cole *v.* La Grange, 113 U. S. 1.

[2] Lowell *v.* Boston, 111 Mass. 454, 461; Trustees *v.* Boone, 93 N. Y. 313.

[3] Loan Ass'n *v.* Topeka, 20 Wall. (U. S.) 655; Calder *v.* Bull, 3 Dall. (U. S.) 386, 387.

[4] See 12 HARV. L. REV. 499; Phila. Ass'n *v.* Wood, 39 Pa. St. 73.

[5] City of Minneapolis *v.* Janney, 86 Minn. 111; Broadhead *v.* Milwaukee, 19 Wis. 624.

[6] See Bank *v.* Billings, 4 Pet. (U. S.) 514, 563.

[7] Trustees *v.* Boone, *supra*; Fire Dept. *v.* Helfenstein, 16 Wis. 136.

[8] See Phœnix Assurance Co. *v.* Fire Dept., 117 Ala. 631; San Francisco *v.* Ins. Co., 74 Cal. 113; State *v.* Merch. Ins. Co., 12 La. Ann. 802; Firemen's Benev. Ass'n *v.* Lounsbury, 21 Ill. 511; Henderson *v.* London, etc., Co., 135 Ind. 23; State *v.* Wheeler, 33 Neb. 563.